



EPA Region 5 Records Ctr.



275621

U.S. Department of Justice

Environment and Natural Resources Division

Environmental Enforcement
P.O. Box 7611
Washington, DC 20044-7611

Telephone (202) 514-2750
Facsimile (202) 616-6584

July 30, 2001

VIA REGULAR MAIL

Counsel for the PRPs on the Attached List

Re: **Skinner Landfill Superfund Site: Fifth Tolling Agreement**

Dear Counsel:

I have attached a fully executed copy of the Fifth Tolling Agreement in the above-referenced matter.

Sincerely,

Annette Lang
Trial Attorney

attachment

cc: via regular mail:
Craig Melodia, USEPA, Region 5 (312-886-7160)

ATTACHMENT A

Charles M. Meyer, Esq.
Santen & Hughes
312 Walnut Street, Suite 3100
Cincinnati, OH 45202
FAX (513) 721-7377
Acme Wrecking Co., Inc.

G. Robert Hines, Esq.
2525 Kroger Building
1014 Vine Street
Cincinnati, OH 45202
FAX (513) 721-2064
John F. Bushelman Construction, Inc.
John F. Bushelman Trust

David Reichert, Esq.
Porter Wright Morris & Arthur
250 East Fifth Street
Cincinnati, OH 45202-5117
FAX (513) 421-0991
David Hirschberg Co.

John Heer, Esq.
Walter & Haverfield
1300 Terminal Tower
Cleveland, Ohio 44113-2253
FAX (216) 575-0911
Sealy

**FIFTH TOLLING AGREEMENT
SKINNER LANDFILL SUPERFUND SITE**

This Fifth Tolling Agreement is made and entered by and between the United States and the Potentially Responsible Parties which are listed on Attachment A to this Agreement ("PRPs").

The United States contends that it has a cause of action against the PRPs, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601 through 9675, to reimburse the United States for costs incurred by the United States Environmental Protection Agency (U.S. EPA) in connection with response actions taken at the Skinner Landfill Site (the Site), located in West Chester, Ohio. The U.S. EPA may ask the United States Department of Justice to file a complaint in the United States District Court for the Southern District of Ohio with respect to the alleged cause of action for, at a minimum, reimbursement of response costs incurred in connection with response actions taken at the Site.

The Parties to this Fifth Tolling Agreement desire to eliminate the need for, or to defer, any litigation of CERCLA claims relating to the Site without thereby altering the claims or defenses available to any party hereto, except as specifically provided herein.

The Parties enter into this Fifth Tolling Agreement to provide time to conduct good faith negotiations and, if appropriate, enter into an agreement that may resolve certain controversies between the Parties.

NOW THEREFORE, the United States and the PRPs stipulate and agree as follows:

1. The Parties agree that, subject to the provisions of Paragraph 5, the period commencing on June 30, 2001, and ending on August 31, 2001, inclusive (the Tolling Period), will not be included in computing the running of any statute of limitations applicable to any action brought by the United States, on behalf of U.S. EPA, pursuant to CERCLA for costs incurred in connection with response actions taken at the Site (Tolled Claims).

2. The Parties further agree that any defenses or claims asserting laches, estoppel, waiver, or other similar equitable defenses based upon the running or expiration of any time period shall not include the Tolling Period for the Tolled Claims.

3. This Fifth Tolling Agreement does not constitute any admission or acknowledgment of any fact, conclusion of law, or liability by any Party to this Fifth Tolling Agreement. Nor does this Fifth Tolling Agreement constitute any admission or acknowledgment on the part of The United States that any statute of limitations, or similar defense concerning the timeliness of commencing a civil action, is applicable to the Tolled Claims.

4. This Fifth Tolling Agreement contains the entire agreement between the PRPs, and no statement, promise, or inducement made by any Party to this Fifth Tolling Agreement that is not set forth in writing in this Fifth Tolling Agreement will be valid or binding. This Fifth Tolling Agreement may not be modified except in writing signed by all PRPs and endorsed herein by the United States.

5. It is understood that the United States may terminate settlement negotiations and commence suit at any time upon notice to the PRPs.

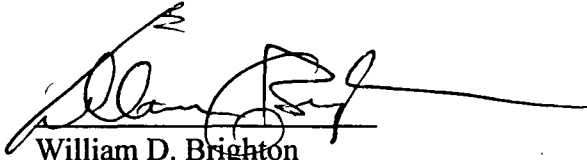
6. The undersigned representative of each of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Fifth Tolling Agreement and to legally bind such party to all terms and conditions of this document.

7. This Fifth Tolling Agreement is intended to be executed on separate signature pages.

FIFTH TOLLING AGREEMENT
SKINNER LANDFILL SUPERFUND SITE

The United States Department of Justice consents to the terms and conditions of this Fifth Tolling Agreement for the Skinner Landfill Superfund Site by its duly authorized representative on this 26th day of June 2001.

By:

A handwritten signature in black ink, appearing to read "William D. Brighton", written over a horizontal line.

William D. Brighton
Assistant Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

**FIFTH TOLLING AGREEMENT
SKINNER LANDFILL SUPERFUND SITE**

The authorized representative of Acme Wrecking consents to the terms and conditions of this Fifth Tolling Agreement for the Skinner Landfill Superfund Site on this 25th day of JUNE 2001.

Acme Wrecking Co., Inc. (as per authorization of
Name of Individual or Entity Charles Meyer, couns
for Acme).

If Entity, Name of Authorized Representative

Schuyler Harris
Signature of Authorized Representative

President
Title

Name and address where
any Notice should be sent:

Fifth Tolling Agreement
Skinner Landfill Superfund Site
Signature Page 4

FIFTH TOLLING AGREEMENT
SKINNER LANDFILL SUPERFUND SITE

David Hirschberg Co.

The authorized representative of _____ consents to the terms and
conditions of this Fifth Tolling Agreement for the Skinner Landfill Superfund Site on this
18th day of May 2001.

David Hirschberg
Name of Individual or Entity

David Reichert
If Entity, Name of Authorized Representative


Signature of Authorized Representative

Attorney
Title

Name and address where
any Notice should be sent:

David Reichert
Porter, Wright, Morris & Arthur
250 East Fifth Street, Suite 2200
Cincinnati, OH 45202

FIFTH TOLLING AGREEMENT
SKINNER LANDFILL SUPERFUND SITE

The authorized representative of John F. Bushelman Trust consents to the terms and

conditions of this Fifth Tolling Agreement for the Skinner Landfill Superfund Site on this

20th day of June 2001.

John F. Bushelman Trust
Name of Individual or Entity

Tracy Ann Engel
If Entity, Name of Authorized Representative

Tracy Ann Engel, Trustee
Signature of Authorized Representative

Trustee
Title

Name and address where
any Notice should be sent:

FIFTH TOLLING AGREEMENT
SKINNER LANDFILL SUPERFUND SITE

The authorized representative of JFB, Inc consents to the terms and

conditions of this Fifth Tolling Agreement for the Skinner Landfill Superfund Site on this

21st day of June 2001.

JFB, Inc
by: Tracy Ann Engel
Name of Individual or Entity

Tracy Ann Engel
If Entity, Name of Authorized Representative

Tracy Ann Engel, President
Signature of Authorized Representative

President
Title

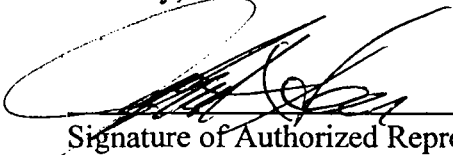
Name and address where
any Notice should be sent:

FIFTH TOLLING AGREEMENT
SKINNER LANDFILL SUPERFUND SITE

The authorized representative of Sealy, Inc. consents to the terms and conditions of this Fifth Tolling Agreement for the Skinner Landfill Superfund Site on this 22nd day of June 2001.

Sealy, Inc.
Name of Individual or Entity

JOHN A. HEER
If Entity, Name of Authorized Representative


Signature of Authorized Representative

counsel
Title

Name and address where
any Notice should be sent:

ATTACHMENT A

Acme Wrecking Co., Inc.
David Hirschberg Co.
John F. Bushelman Trust
JFB, Inc.
Sealy, Inc.